



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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June 12, 2014

Mr. Tyler O. Waltman  
Associate General Counsel  
Red Leaf Resources, Inc.  
10808 S Riverfront Parkway, Suite 200  
South Jordan, Utah 84095

Dear Mr. Waltman:

The U.S. Environmental Protection Agency is in receipt of your April 22, 2014, response on behalf of Red Leaf Resources, Inc. (Red Leaf), to the EPA's request that Red Leaf meet with EPA technical staff so that the EPA can better understand Red Leaf's proposed oil shale project in Uintah County, Utah. Specifically, the EPA wants to discuss potentially affected media such as air, surface and/or groundwater, and soils, as well as waste streams and any applicable permitting or other requirements in Indian country. Your response requested a list of specific questions that the EPA plans to discuss during our meeting, and our jurisdictional basis for asking them.

While we recognize Red Leaf's previous communications with EPA Region 8's Air and National Pollutant Discharge Elimination System (NPDES) stormwater programs, there still may be gaps in our data and understanding of the project and the potential applicability of various programs for which the EPA has responsibility. The EPA believes it is far more efficient to meet in person to share information, at least at the initial stages, rather than to exchange letters containing a list of detailed questions, or for the EPA to send formal information requests pursuant to relevant statutes, such as the Resource Conservation and Recovery Act (RCRA).

Regarding your question concerning jurisdiction, Red Leaf's proposed project is located in Township 13S, Range 23E, Section 30, which is within the Uintah and Ouray Reservation and is Indian country, as that term is defined at 18 U.S.C. § 1151 and as held in *Ute Indian Tribe v. Utah*, 114 F.3d 1513 (10th Cir. 1997), *cert. denied*, 522 U.S. 1107 (1998). Please note that as defined by 18 U.S.C. § 1151, Indian country includes all reservation lands, including lands owned by non-members of the relevant tribes. The EPA implements federal environmental programs in Indian country, unless it has explicitly approved a tribe or state to do so. The EPA has not approved the Ute Indian Tribe or the state of Utah to implement any federal environmental regulatory program on Indian country lands within the Uintah and Ouray Reservation.


As you are aware, the EPA issued a Notice of Data Availability on Spent Oil Shale from Above Ground Retorting on December 24, 2008, wherein we reiterated that spent oil shale from the above ground retorting of oil shale is not a Bevill waste excluded from regulation under Subtitle C of RCRA. More specific to Red Leaf, the EPA's Office of Resource Conservation and Recovery (ORCR) issued a

March 31, 2009, letter to Mr. Todd Dana, Red Leaf's Chairman, in which the Agency reviewed Red Leaf's process and determined that waste from its roasting/leaching activity is not excluded from regulation under Subtitle C of RCRA. In light of apparent recent changes to that process, the EPA needs updated information to ensure that Red Leaf is properly characterizing and treating, storing and disposing of any waste generated by its operations.

Please note that the EPA Region 8 Wastewater Unit's February 2014 letter to Red Leaf, determining that Red Leaf's proposed oil shale extraction activities are included in SIC Code 1311 for oil and gas extraction for NPDES stormwater purposes, has no bearing on ORCR's determination that those same activities are properly classified as mining for RCRA purposes. Specifically, for Clean Water Act purposes, the EPA establishes effluent limitation guidelines for classes and categories of point sources and uses SIC codes to determine a point source's class or category, while in contrast, for RCRA purposes, the EPA does not consider SIC codes. Instead, for RCRA purposes, the EPA focuses on the process employed. Based on the above, Red Leaf is required to characterize its waste to determine whether it is hazardous, and then manage it in accordance with RCRA. In addition, Red Leaf will be required to apply for an NPDES industrial stormwater permit if its stormwater discharges have resulted in the discharge of reportable quantities of hazardous substances or oil, or if its stormwater discharges contribute to a violation of a water quality standard.

Please contact me at (303) 312-6468 to schedule a meeting between the EPA and Red Leaf, or if you have further questions.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line that tapers off to the right.

Joan Card  
Senior Policy Advisor

cc: Mr. James A. Holtkamp (*sent via email to: [jholtkamp@hollandhart.com](mailto:jholtkamp@hollandhart.com)*)  
Gordon Howell, Chairman, Ute Indian Tribe  
Manuel Myore, Director, Energy and Minerals Department, Ute Indian Tribe  
Tom Fredericks, Fredericks Peebles & Morgan  
Amanda Smith, Director, Utah Department of Environmental Quality  
John Baza, Director, Utah Division of Oil, Gas and Mining